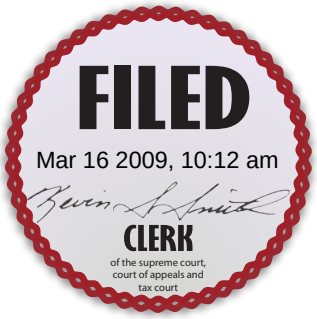

ATTORNEY FOR APPELLANT:

KENNETH R. MARTIN
Goshen, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

EDWARD L. SCOTT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0807-CR-355
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0611-FA-57

March 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Edward L. Scott was convicted of dealing in cocaine[1] as a Class A felony after a jury trial and was sentenced to forty-five years in the Department of Correction. He appeals, raising the following restated issues:

I. Whether the trial court abused its discretion when it admitted evidence of a prior meeting between an undercover police officer, a confidential informant, and Scott; and

II. Whether Scott's forty-five year sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

Between 5:00 p.m. and 6:00 p.m., on November 21, 2006, Officer Jeffrey Gorball was working as an undercover officer for the Elkhart Police Department and making controlled drug buys with a confidential informant ("CI"). After they had completed a buy at a house on Second Street in Elkhart, the CI informed Officer Gorball that they could possibly buy cocaine at another address on the same street. The two walked to the address, and the CI knocked on the front door. After the CI identified himself, Scott opened the door. The CI asked Scott if he had any "hard or soft," referring to crack cocaine or powder cocaine and explained that they did not have any money at that time. *Tr*. at 136, 176, 181. Scott invited the undercover officer and the CI into the residence and had them follow him into the kitchen. Scott opened the microwave and removed a clear glass plate containing cocaine. He showed the contents of the plate to Officer Gorball and the CI and told them he was cooking

[1] *See* Ind. Code § 35-48-4-1.

cocaine. Scott put the plate back in the microwave and told the men they could come back in a half-hour to buy the cocaine. Officer Gorball and the CI then left Scott's residence.

Officer Gorball returned to the police department and obtained a search warrant for Scott's residence. Several officers executed the warrant at approximately 1:00 a.m. November 22, 2006. When the warrant was executed, Scott was at the residence with two small children. During the search of the residence, a clear plastic bag containing twenty-one individual clear plastic baggies each containing a whitish, rocklike substance was recovered from a desk drawer in the living room near the front door. Both the contents of the plastic baggies and the substance on the plate were later determined to be crack cocaine. The aggregate weight of the individually packaged cocaine was determined to be 6.6 grams. The officers also discovered a clear glass plate with an off-white substance on it in the same drawer. A loaded .22 caliber revolver was recovered from underneath the cushions of a couch in the bedroom. The officers also found a digital scale on the bedroom floor and four hundred and twenty dollars in cash in the pocket of a jacket in the bedroom.

The State charged Scott with dealing in cocaine as a Class A felony. Prior to trial, the State gave notice that it intended to present evidence of the initial visit of Officer Gorball and the CI to Scott's residence. When the State moved to introduce the evidence at trial, the trial court admitted the evidence over Scott's objection. At the conclusion of the trial, the jury found Scott guilty as charged. The trial court sentenced him to forty-five years executed. Scott now appeals.

DISCUSSION AND DECISION

I. Admission of Evidence

The admission of evidence is within the sound discretion of the trial court. *Cox v. State*, 774 N.E.2d 1025, 1026 (Ind. Ct. App. 2002). We will not reverse the trial court's decision to admit evidence absent an abuse of discretion. *Boney v. State*, 880 N.E.2d 279, 289 (Ind. Ct. App. 2008), *trans. denied*. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. *Id*.

Indiana Evidence Rule 404(b) states:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pre-trial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

The rule does not bar evidence of uncharged acts that are "intrinsic" to the charged offense. *Wages v. State*, 863 N.E.2d 408, 411 (Ind. Ct. App. 2007), *trans. denied*. Other acts are "intrinsic" if they occur at the same time and under the same circumstances as the crimes charged. *Id*. "By contrast, the paradigm of inadmissible evidence under [Evidence] Rule 404(b) is a crime committed on another day in another place whose only apparent purpose is to prove the defendant is a person who commits crimes." *Id*. (citing *Howard v. State*, 761 N.E.2d 449, 452 (Ind. Ct. App. 2002), *trans. denied*). Evidence of occurrences near in time and place that complete the story of the crime is admissible even if it tends to establish the commission of other crimes not included among those being prosecuted. *Id*.

Scott argues that the trial court abused its discretion in admitting the evidence of the initial meeting between himself and Officer Gorball and the CI because this evidence was inadmissible under Indiana Evidence Rule 404(b). He contends that this was evidence of prior uncharged misconduct and that none of the other purposes under Evidence Rule 404(b) justified admitting the evidence at trial. He further claims that the evidence of the initial meeting was not intrinsic to the charged offense and that the earlier meeting and the execution of the warrant were completely capable of standing alone without reference to each other.

The evidence concerning the initial meeting between Scott and Officer Gorball and the CI was intrinsic to the charged crime in the present case. This evidence of Scott's possession and offer to sell cocaine to Officer Gorball and the CI occurred close in time and place to the crime, completed the story of the crime, and was probative of Scott's intent to commit the charged crime. The admission of the evidence was not precluded by Evidence Rule 404(b). The trial court did not abuse its discretion when it allowed the evidence to be admitted at Scott's trial.

II. Inappropriate Sentence

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State,* 834 N.E.2d

713, 718 (Ind. Ct. App. 2005).

Scott argues that his forty-five year sentence was inappropriate in light of the nature of the offense and his character. He specifically contends that, as to the nature of the offense, the sentence was inappropriate because this crime included no violence, he did not resist arrest, and the weight of the cocaine found indicated that he was not a major drug source. As to his character, Scott claims that his sentence should be revised because his employment history deserved consideration, he had no prior drug offenses, and three of his felony convictions occurred when he was sixteen.

As to the nature of the offense, when the search warrant was executed, the officers discovered twenty-one individually wrapped packages of crack cocaine, which had an aggregate weight of 6.6 grams. They also found digital scales, a large amount of cash, a plate containing cocaine residue, and a loaded handgun. Additionally, at the time the officers executed the warrant, two young children were present at Scott's residence.

As to Scott's character, his criminal history consisted of a juvenile referral for criminal trespass, a juvenile adjudication for robbery, one adult misdemeanor conviction, and four adult felony convictions. He also had two felony charges pending at the time of the instant offense. Additionally, Scott had several previous violations of probation and was on probation at the time that he committed his current offense. We conclude that Scott's forty-five year sentence for Class A felony dealing in cocaine was not inappropriate in light of the nature of the offense and the character of the offender. Affirmed.

BAKER, C.J., and NAJAM, J., concur.